

SENATE BILL NO. 259

INTRODUCED BY J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A SECONDARY ROAD THAT PASSES THROUGH OPEN RANGE IN A COUNTY PARK TO REMAIN UNFENCED PROVIDED THAT CERTAIN CRITERIA ARE MET TO MITIGATE SAFETY HAZARDS PRESENTED BY LIVESTOCK; AND AMENDING SECTIONS 60-7-102, 60-7-103, AND 60-7-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 60-7-102, MCA, is amended to read:

"60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) A "high-hazard area" is a segment of the primary or secondary highway system passing through open range where livestock ~~moves~~ move on or across the highway often enough, in enough numbers, and with enough ease of access that ~~such~~ the animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(2) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

(3) A "low-hazard area" is a segment of the primary or secondary highway system passing through open range ~~which~~ that is not a high-hazard area.

(4) "Open range" means those areas of the state where livestock ~~is~~ are raised and maintained in sufficient numbers ~~as~~ to constitute a significant part of the local or county economy and where ~~such~~ animals livestock graze and move about generally unrestrained by fences."

Section 2. Section 60-7-103, MCA, is amended to read:

"60-7-103. Department to fence right-of-way through open range -- exception. (1) ~~The~~ Except as provided in subsection (3), the department shall fence the right-of-way of any part of ~~the state highway system~~ a primary or secondary highway or a county road or bridge that is constructed or reconstructed

1 after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist.
2 ~~Where~~ When a fence is constructed, adequate stock gates or stock passes, as necessary, ~~shall~~ must be
3 provided to make land on either side of the highway usable for livestock purposes.

4 (2) The department shall erect a right-of-way fence in ~~every~~ the high-hazard ~~area~~ areas where
5 fencing is warranted as promptly as possible, and the cost of ~~such~~ the fence construction is an expenditure
6 for the enforcement of federal-aid highway safety programs. ~~Gates~~ Even if a right-of-way fence is
7 determined to be unwarranted pursuant to subsection (3), gates, stock underpasses, water facilities, and
8 cattle guards may be installed where necessary to enhance safety and to make the land on either side of
9 the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

10 (3) The department is not required to fence the right-of-way of a secondary highway through open
11 range that passes through a county park, provided that:

12 (a) the department and the board of county commissioners:

13 (i) agree that the criteria listed in this subsection (3) have been adequately met;

14 (ii) agree that fencing the portion of the highway under consideration is not warranted or advisable;

15 and

16 (iii) cooperate in developing an accident mitigation plan for the portion of the highway that will
17 remain unfenced. The plan may include the speed limit established as provided in 61-8-309 or 61-8-310,
18 how the criteria listed in this subsection (3) have been met, how the plan will be implemented, and any
19 other issues related to minimizing accidents involving livestock and motor vehicles where a fence has not
20 been erected.

21 (b) livestock grazing does not occur from Memorial Day to Labor Day;

22 (c) the speed limit established as provided in 61-8-309 or 61-8-310 is clearly posted and
23 enforceable;

24 (d) warning signs indicating that livestock may be on the road are posted at regular intervals along
25 the road and maintained during the months that livestock grazing occurs;

26 (e) livestock management practices, such as locating water and administering dietary supplements
27 away from the road and developing grazing and herding plans that minimize the amount of time that
28 livestock are on or near the road, are employed;

29 (f) more than one-half of the forage that the livestock will consume is at least 50 yards away from
30 the road;

(g) the road is not regularly used by commercial motor vehicles; and

(h) the unfenced portion of the road does not exceed 20 miles in length."

Section 3. Section 60-7-202, MCA, is amended to read:

"60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system ~~which~~ that the department of transportation designates as being impracticable to exclude livestock. These portions of the highway ~~shall~~ must be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

(4) the parts of the secondary highway system that pass through county parks and that meet the criteria established in 60-7-103(3)."

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